

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

Request of State Farm Mutual
Automobile Insurance Company
For Clarification & Declaratory Ruling

File No. _____

**STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY
REQUEST FOR CLARIFICATION & DECLARATORY RULING**

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May 13, 2005

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To: Monica Desai, Chief, Consumer and Governmental Affairs Bureau

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REQUEST FOR CLARIFICATION & DECLARATORY RULING**

Pursuant to Section 1.2 of the Commission’s rules,¹ State Farm Mutual Automobile Insurance Company (“State Farm”) respectfully requests that the Bureau clarify, on an expedited basis, the application of one aspect of the Commission’s do-not-call requirements.² Specifically, State Farm requests clarification that its exclusive agents, in the circumstances described below, are permitted to telemarket to State Farm’s customers on State Farm’s behalf as long as State Farm otherwise has a valid “established business relationship” (“EBR”)³ with the customer.

In the *Second Recon Order* in the Commission’s docket *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*,⁴ the FCC determined that an

¹ 47 C.F.R. § 1.2.

² See 47 C.F.R. § 64.1200(c)(2).

³ 47 C.F.R. § 64.1200(f)(3) (An EBR expires 18 months following the last transaction between a seller and its customer or when the customer requests no more telemarketing calls from the seller, whichever occurs first.).

⁴ *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Second Order on Reconsideration, FCC 05-28, CG Docket No. 02-278 (rel. Feb. 18, 2005)(“*Second Recon Order*”).

insurance company may call a policyholder during the life of an insurance policy pursuant to the EBR exception,⁵ even if the policyholder has registered on the National Do-Not-Call Registry.⁶ In contrast, the Commission concluded that *insurance agents* may call policyholders only for a period of 18 months from the initiation of a policy because, unlike an insurance company with which a consumer has an “ongoing relationship,” an “insurance agent *typically* is only involved in the original transaction.”⁷

While one-time interactions between insurance agents and policyholders may be typical in the insurance industry, State Farm has employed a radically different business structure and approach for over eighty years. Far from having agents involved only in the original transaction, State Farm depends almost entirely on more than 16,000 insurance agents – who have an exclusive agency relationship with State Farm – to both represent the company to consumers and provide service to policyholders. Indeed, they are required by agreement to perform those functions and are compensated on that basis. For example, State Farm agents are responsible for answering policyholders’ questions and updating them when adjustments in coverage may be appropriate. Agents solicit applications for coverage, submit claims, and in some cases, have draft authority to pay claims on the spot. Moreover, State Farm itself conducts no telemarketing and delegates almost all policyholder communications to local State Farm agents.

Thus, in contrast to the Commission’s description of the “typical” insurance agent, State Farm agents are similarly situated to other parties who are permitted by the FCC to telemarket pursuant to an EBR between a consumer and a financial services company. State Farm insurance

⁵ See 47 C.F.R. § 64.1200(f)(9)(ii).

⁶ *Second Recon Order*, ¶¶ 26-27.

⁷ *Id.* at nt. 77 (emphasis added).

agents are independent contractors, not employees of State Farm. Yet, they perform the same services for State Farm as employees do for companies that happen to in-source, rather than out-source, customer service functions. Likewise, State Farm agents make the same types of customer calls on behalf of State Farm as third-party telemarketing agents hired by financial service companies to make calls under the EBR exception.

Accordingly, the Bureau should clarify that State Farm's exclusive agents are permitted to call policyholders on behalf of State Farm during the life of an insurance policy (or until the EBR between an insurance company and a policyholder is otherwise terminated). The FCC already has made clear that, with respect to such telemarketing, an insurance company is responsible for its agents' compliance with applicable telemarketing regulations.⁸

⁸ The FCC has stated that a company on whose behalf a telemarketing call is made "bears ultimate responsibility for any violations," and calls "placed by an agent of the [company] are treated as if the [company] itself placed the call." *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Memorandum Opinion and Order, 10 FCC Rcd 12391 at ¶ 13 (Aug. 7, 1995).

Respectfully submitted,

By:

A handwritten signature in dark ink, appearing to read "R. Pettit", is written over a horizontal line.

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